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JOHN T. FEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 519

TAYLOR FORGE & PIPE WORKS,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

	PAGE
Decisions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	3
Statement of the Case	4
A. The Facts	4
B. Board's Decision	7
C. Court of Appeal's Decision	9
Reasons for Granting the Writ	11
I. The Decision Below Is In Conflict With the Recent Decision of the Court of Appeals for the Ninth Circuit in NLRB v. F. W. Woolworth Company	11
II. The Decision Below Is Incompetent With the Decision of This Court in NLRB v. Truitt Manufacturing Company	14
III. This Case Involves a De Novo Situation as It Requires the Delivery of Analytical Conclusions Rather Than Facts	15
Conclusion	19
Appendix	23

CITATIONS.

Aluminum Ore Co. v. NLRB, 131 F. 2d 485 (C. A. 7, 1942) 17

Boston Herald-Traveler Corp. v. NLRB, 223 F. 2d 58 (C. A. 1, 1955) 17

Federal Trade Commission v. American Tobacco Co., 264 U. S. 298, 44 S. Ct. 336..... 13

National Labor Relations Board v. J. H. Allison & Co., 165 F. 2d 766 (C. A. 6, 1948)..... 17

National Labor Relations Board v. Hekman Furniture Co., 207 F. 2d 561 (C. A. 6, 1953)..... 17

National Labor Relations Board v. Itasca Cotton Mfg. Co., 179 F. 2d 504 (C. A. 5, 1952)..... 17

National Labor Relations Board v. Item Co., 220 F. 2d 956 (C. A. 5, 1955); cert. den. 350 U. S. 836, 76 S. Ct. 73 .....9, 17

National Labor Relations Board v. Jacobs Mfg. Co., 196 F. 2d 680 (C. A. 2, 1952)..... 18

National Labor Relations Board v. Leland-Gifford Co., 200 F. 2d 620 (C. A. 1, 1952)..... 17

National Labor Relations Board v. New Britain Machine Co., 210 F. 2d 61 (C. A. 2, 1954)..... 17

National Labor Relations Board v. Otis Elevator Co., 208 F. 2d 176 (C. A. 2, 1953)..... 17

National Labor Relations Board v. Truitt Mfg. Co., 351 U. S. 149, 76 S. Ct. 753 (1956).....14, 15, 18, 19, 21

National Labor Relations Board v. Whitin Machine Works, 217 F. 2d 593 (C. A. 4, 1954); cert. den. 349 U. S. 905, 75 S. Ct. 583 (1955).....9, 17

National Labor Relations Board v. F. W. Woolworth Co., 235 F. 2d 319 (C. A. 9, 1956).....12, 13, 21

National Labor Relations Board v. Yawman & Erbe Mfg. Co., 187 F. 2d 947 (C. A. 2, 1951)..... 17

Statutes.

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, et seq.) Section 8(a)(5)..... 3

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Taylor Forge & Pipe Works, petitioner, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Seventh Circuit, issued on June 6, 1956, denying petitioner's request to review and set aside an order issued by the Board against the petitioner.

THE DECISIONS BELOW.

The opinion of the Court below (Appendix, *infra*, pp. 23 to 31) is reported at 234 F. 2d 227 (C. A. 7, 1956). The findings of fact, conclusions of law, and order of the Board (R. 177-186)* are reported at 113 NLRB 693.

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*The reference "R." designates the Joint Appendix filed in the Court of Appeals, to which has been added the proceedings in that court.

JURISDICTION.

The decree of the Court below (Appendix *infra*, pp. 32 to 35) was entered on July 23, 1956. The jurisdiction of this court is invoked under 28 U. S. C. 1254, and under Section 10 (e) of the National Labor Relations Board, as amended, 63 Stat. 107, 29 U. S. C. 160 (e).

QUESTION PRESENTED.

The Forge and Machine Workers Industrial Union (hereinafter referred to as the "Union") is the statutory bargaining representative of the employees of Taylor Forge & Pipe Works, the petitioner (hereinafter referred to as the "Company").

A Company job analyst pursuant to an analytical procedure known as the National Metal Trades Association Job Rating Plan evaluated all hourly paid jobs (R. 111, 57-68, 23-52). Each job was given a numerical value which is the total of the point values assigned to the job when its work content was evaluated under eleven different factors.

The Company representative refused a blanket request of the Union's attorney for the point values assigned under each of eleven factors by the Company's job analyst (which can be considered the subconclusions of the analyst) and for this single reason was found guilty of bargaining in bad faith with the Union under Section 8 (a)(5) of the National Labor Relations Act.

The Union representatives had received from the Company the *total* point values assigned to each job by the job analyst (R. 101) (which can be considered the evaluation conclusions of the analyst) along with the descriptive wage rate and conversion tables (R. 23-52, 56) as well as substantial information about the analytical procedure used (R. 57-68).

The question presented in this case is:

Whether or not, as a matter of law, the Board and Court erred in finding that the Company was guilty of bargaining in bad faith *per se* under Section 8 (a)(5) of the National Labor Relations Act when it refused to furnish the Union with certain analytical subconclusions—*i.e.*, the point values, assigned by an analyst to each job under eleven evaluation factors, (the total of these points assigned each job by the analyst had been given the Union)—in the absence of any showing of "relevancy" or "need" for such information, especially in view of the fact that the Company did not predicate opposition to any particular collective bargaining demand upon the analytical subconclusions that its job analyst had reached.

STATUTE INVOLVED.

Section 8 of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), provides in part:

Unfair Labor Practices.

"Sec. 8 (a) It shall be an unfair labor practice for an employee—

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a)."

STATEMENT OF THE CASE.

A. The Facts.

By the time collective bargaining between the parties commenced, in April, 1954, the Union representatives had been supplied by the Management representatives with the following information which from time to time had been supplemented and brought up to date:

(1) A complete list of all employees, showing their wage rate and job classification (R. 15).

(2) The wage rate for each job (R. 23-52).

(3) The job description for each job (R. 97, 83).

(4) The National Metal Trades Association Job Rating Procedure Booklet describing the process of analyzing jobs and assigning point values to them (R. 57-68).

(5) The *total* points assigned each job by the Company analysts by following the National Metal Trades Job Rating Procedure (R. 101, 99-100).

(6) The conversion table used to convert the *total* points for each job into monetary amounts (R. 56).

Other information had been supplied by the Company concerning matters not directly relevant here (R. 15-18).

The information sought by the Union representatives, the refusal of which brings this case before this Court, consisted of the number of points assigned by the Company job analysts under each of eleven evaluation factors. These job analysts selected for each job what they considered to be the appropriate degree from among five degrees described in the National Metal Trades Association Job Rating Procedure Booklet for each of eleven factors (R. 111, 57-68). For example, the "education" required to properly perform a particular job, in the opinion of the analyst, was compared with the description of five different degrees of education set forth in the booklet under the "education" factor (R. 59-60). The most appropriate

degree in the judgment of the analyst was selected and the number of points for the selected degree was then assigned to the job. Under the "experience" factor the job analyst similarly selected the degree he felt best fitted the job and assigned the resulting number of points to the job. The appropriate degree under "initiative and ingenuity" was selected and the resulting number of points assigned to the job. This process was continued under factors involving the "physical" and the "mental and visual" demands required of the employee when he performs the job; the responsibility of the employee when performing the job for "equipment and process," "material or product," "safety of others," and "work of others." Finally, degree ratings reflecting the quality of the "working conditions" surrounding the job and the "unavoidable hazards," if any, involved in performing the job were selected and the appropriate points assigned to the job.

The total of all of the point values resulting from the selection of degree ratings under each of the eleven factors makes up the *total point rating* for the job. This total point rating or the composite conclusion of the job analyst for each job was made available to the Union representatives (R. 101).

In addition, the Company had not hesitated to supply to the Union the points which had been assigned to each job by the selection of the appropriate degree under each of the eleven job rating factors (the subconclusions) on *each occasion that the rate of a particular job had been challenged by the Union* as being inequitable (R. 9-13, 135, 150-152). Thus, the information requested, refused in this case because it was a "blanket" request and unrelated to a particular wage dispute was supplied to the Union when it became relevant to a *particular* dispute between the parties.

The situation surrounding the two separate "blanket" requests for the points assigned under each factor and the refusal to supply this information were as follows:

The Union attorney testified that sometime shortly prior to April, 1954, he had a telephone conversation with the Industrial Relations Director of the Company, and that during this conversation he had requested the point values assigned by the Company's job analyst to each job when he selected of one of five degree ratings *under each of the eleven factors* (R. 86-87). In refusing this request, the Industrial Relations Director is reported to have stated that the Union was free to follow the National Metal Trades Association Job Rating procedure itself. It had already been given all the necessary information, *i.e.*, the wage rates and job descriptions and the booklet describing the procedure (R. 87, 56-68). Furthermore, the *total* of the points assigned to each job by the Company job analyst under the eleven factors had been made available to the Union (R. 101).

On April 16, 1954, at a collective bargaining conference, the Union attorney again requested the point values under each of the eleven factors for each job (R. 87). He explained, as did the Industrial Relations Director for the Company, that the information was refused because the latter did not want to supply information which the Union would attempt to "pick apart" (R. 88, 110). In reply, the Industrial Relations Director said the Union could make its own evaluations by following the National Metal Trades Job Rating Procedures described in the booklet. Since the Union already had available to it the total point evaluation assigned to each job by the Company's job analyst (R. 110, 101), the Union could in this way check the conclusion of the Company analyst.

The Industrial Relations Director also explained that

whenever there had been a dispute over the equity of a particular wage rate and the material became relevant, the breakdown of the total point score to the points assigned under each of the eleven factors had been given to the Union (R. 9-13, 77, 110, 135). There is no evidence that there was a dispute concerning any particular wage rate pending at the time that the Union representative made his blanket request for the breakdown of the total points assigned each job.

When the Union attorney's "blanket" request was denied, he is reported to have said: "That is just what I want to hear you say. Now I am going to file an unfair labor practice charge * * * I waited eight months for this chance" (R. 111).

B. Board's Decision.

The National Labor Relations Board, in a divided opinion, held that the failure of the Company to comply with the Union's request for the points assigned under each of the eleven factors (even though the total points assigned to each job had been supplied) was evidence of a violation of the Company's obligation to bargain in good faith under Section 8 (a)(5) of the Act (R. 177-181).

The Board pointed out that the data asked for had been supplied when the Company and the Union had been in dispute over an individual wage rate, and, hence, the Board said it "is equally relevant and necessary when the object of the negotiations is to establish broad pay formulas which will eliminate the necessity of filing individual grievances."[1]

1. It should be noted that there is no evidence whatsoever in the record that the request for the information was related to any such collective bargaining objective and hence this comment concerning relevancy was mere speculation.

Board Chairman Guy Farmer and Member Phillip Rogers vigorously dissented (R. 181-186). They said:

> "We believe that the majority's conclusion in this case establishes a broadside principle for every issue even remotely resembling a wage information situation. The Supreme Court has rejected such an approach to cases involving charges of *per se* 8 (a) (5) violations. It was held that, 'The duty to bargain collectively is to be enforced by application of the good faith bargaining standards of Section 8 (d) to the facts of each case. * * *' The Respondent's over-all good faith in its dealings with the Union cannot be gainsaid." (R. 183.)

They said that an employer was not under an obligation to furnish a Union "with all the minutae leading to its subconclusions which, in turn, are the basis for the ultimate bargainable fact—the rate of pay for each individual job." (R. 184.) They pointed out that the majority was requiring as part of the obligation to bargain in good faith the delivery of analytical material and said:

> "Indeed, it is not even clear that the subject of the Union's demand is 'wage information'. The point designations which the Respondent assigns to the 11 individual job factors represent the Respondent's considered judgment based upon its introspective mental processes. In this instance, the Respondent reduced to writing the finer points of its thinking about the relative difficulty of the jobs in its plant, the comparative skill, experience, training, and other traits the jobs require. Another employer keeps these elements of his mental processes in the abstract and does not reduce them to writing. If the more methodical employer must expose the details of his inner thoughts at the bargaining table for others critically to appraise, logically, a less systematic one might be compelled to codify his thoughts in writing for the benefit of his em-

ployees' bargaining representative. A union's right to such information, if it is such a right and if information it is, can hardly depend upon the form in which an employer keeps it." (R. 185.)

After considering the court decisions cited by the majority (including *Whitin Machine Works,* 108 NLRB 1537, enf'd 217 F. 2d 593 (C. A. 4, 1954), cert. den., *Whitin Machine Works* v. *N. L. R. B.,* 349 U. S. 905, 75 S. Ct. 583 (1955) and *Item Company,* 108 NLRB 1634, enf'd 220 F. 2d 956 (C. A. 5, 1955), cert. den., *Item Co.* v. *N. L. R. B.,* 350 U. S. 836, 76 S. Ct. 73 (1955); re-hring. den., 350 U. S. 905, 76 S. Ct. 177 (1955)), they conclude that the subordinant detailed type of information involved in the instant case was far too remote from the type of information dealt with in those cases to make their holdings applicable in the instant case.

In their opinion the statute did not impose upon an employer the obligation to reveal, *upon blanket request, with no pretense of showing "need" or "relevancy"*, remote information or facts, such as were here involved. They concluded that in view of the extensive amount of information given to the Union, it was impossible to decide that the Company had violated its obligation to bargain collectively, "which is all that under the statute it was obligated to do." (R. 186.)

C. The Court of Appeals' Decision.

The Court of Appeals for the Seventh Circuit, in a divided opinion, denied the petitioner's request to set aside the Board order.

The Court pointed out that the law did not require an employer to make an analytical study for the Union, or for itself, for that matter, but when it did so the Court could see no reason why the Union should not be entitled to the

results of this study. The Court majority said in this connection:

> "* * * We see no reason why either party to the bargaining process should not furnish the other any relevant data or information in its possession pertinent to the wages determined for a certain job or to the wage structure as a whole." (Appendix, *infra*, p. 28.)

The Court explained away the lack of evidence concerning the Union's need for this information by saying that it might be impossible for the Union to determine the value of the information until it had an opportunity to examine it. The Court said in this regard:

> "Only full disclosure of [petitioner's] wage structure based on the point values assigned to each factor for all jobs would enable the Union to know whether to press or modify a particular wage demand, whether inequities exist which merit discussion or correction, and whether other elements are present in the wage structure which, though impossible to visualize beforehand, appear to merit discussion once the full picture is available." (Appendix, *infra*, p. 28.)

Because the Company had supplied the information requested in situations where grievances had arisen over an alleged inequity in a particular wage rate, the Court reasoned that the information must be equally relevant for the establishment of broad pay formulas during collective bargaining.[2]

In a dissenting opinion, Judge Finnegan stated that the evidence made it clear that the Company had supplied the Union with substantial information and that that information was sufficient to enable it to make its own wage rate analysis. He said that in view of the Company's will-

2. This assumption of a relationship between the information requested and issues that might arise in collective bargaining is an adoption of the Board's assumption because there is no evidence whatsoever in the record concerning any such issue.

ingness to supply a substantial amount of information, it was possible to appraise the petitioner's attitude as one of good faith without forcing the production of the job rating substantiating data.

He pointed out that the point values assigned to a job by selecting one of five degrees under various evaluation factors was dependent upon the judgment of the evaluators and that these point values therefore represented managerial judgments or opinions rather than basic facts. For this reason he said he was unwilling to enforce the Board order because "it forces Taylor to undergo a test for determining the paternity and intellectual pedigree of its managerial judgments and opinions." (Appendix, *infra*, p. 31.)

REASONS FOR GRANTING THE WRIT.

The Company respectfully submits that the Court should grant the writ for the following reasons:

I. The Decision Below Is in Conflict With the Recent Decision of the Court of Appeals for the Ninth Circuit in NLRB v. F. W. Woolworth Company.

The decision of the Court below is based upon the proposition that an employer commits an unfair labor practice *per se* if he refuses a request for information made by a union representative and that no prior showing of need or relevancy is necessary because only after the union has an opportunity to examine the information can it determine to what extent the information would be helpful to its bargaining position. Only after the delivery of the information would the union be able to determine, the court said

> "* * * whether to press or modify a particular wage demand, whether inequities exist which merit discussion or correction, and whether other elements are

present in the wage structure which, although impossible to visualize beforehand, appear to merit discussion once the full picture is available." (Appendix, *infra*, p. 28.)

The conflicting view is taken by the Court of Appeals for the Ninth Circuit in *NLRB* v. *F. W. Woolworth Co.*, 235 F. 2d 319 (June 25, 1956). That opinion is premised upon the view that before a company can be found guilty of bargaining in bad faith for refusing to deliver information, the union must make some showing concerning its need or relevancy The Court held that no relevancy between the information requested and any issues in collective bargaining could be shown in that case because the request for information came after the general wage issue had been settled. In so doing, the Court rejected the view that an employer could be found guilty of bargaining in bad faith if it refused to give to a union information which, upon examination, might produce a basis upon which to predicate a future bargaining demand upon the employer. In direct contrast to the Court in the decision below, the Court in the *Woolworth* case, *supra*, stated:

"We do not hold that a request must painfully, laboriously or absolutely demonstrate in detail a relevancy, but we do believe that at some time or some place some specific relevancy should be asserted or facts should be shown whereby one could say that the employer ought to know anyway without demonstration of the relevancy of the information to the relationship of the parties. It must be something more than Micawber's 'something may turn up'." (235 F. 2d 319, 322.)

* * * * *

"Our appraisal of this record is that the claim of unfair practice, when closely analyzed, condenses to no more than, 'Well, we might find something'. If we are correct in that analysis of the nature of the claim, then we are confident of our conclusion that there was no unfair labor practice." (235 F. 2d 319, 323.)

* * * * *

"We do hold that the information does not have to be produced on a 'Well, we want it' or 'It is a handy thing to have around' basis." (235 F. 2d 319, 323.)

Chairman Farmer and Member Rogers in their dissent from the Board's decision in the instant case pointed up this important difference between the decision below and the holding in the *Woolworth* case, when they said:

"* * * We see nothing in the statute which imposes upon an employer the obligation to reveal, upon blanket request and with no pretense of any showing of need or relevancy, such remote 'information' or 'facts' as are involved in this case." (R. 186.)

There is no evidence that any representative of the Union even made the claim that the subconclusions of the Company's job analyst—that is, the points assigned under each of the eleven factors—was essential if the Union was to be able to bargain properly with the employer. Nor does the evidence show that there were any intra-plant wage rate inequity disputes then existing between the Company and the union.

The union's "blanket demand" for the subconclusions of the job analyst was entirely unsupported by any showing of need or relevancy. The request was made, just as the Ninth Circuit explained Micawber made his request, in the hope that "something may turn up" and that "Well, we want it or 'it is a handy thing to have around'."[3]

3. Mr. Justice Holmes likewise stated in *Federal Trade Commission* v. *American Tobacco Company*, 264 U. S. 298, p. 306:

"It is contrary to the first principles of justice to allow a search through all the respondent's records, relevant or irrelevant, in the hope that something will turn up."

II. The Decision Below Is Inconsistent With the Decision of This Court in NLRB v. Truitt Manufacturing Company.

In the *Truitt* case (351 U. S. 149, 76 S. Ct. 753 (1956)), the company asserted that it was unable to grant a wage increase because of inability to pay. This Court affirmed a Labor Board finding that the Company had bargained in bad faith when it refused to give the union some information to establish the honesty of its assertion of inability to pay.

However, this Court did not say that there was any obligation to deliver financial information to a union upon the union's mere request. The entire theory of this Court's decision in that case was predicated upon the refusal of the company to give any information *after* predicating a denial of a union demand upon an assertion of lack of ability to pay, an assertion based on facts exclusively within its knowledge.

In the instant case, there is no evidence, nor does the Board claim, that the Company refused to grant a wage adjustment in a particular wage rate based upon its assertion that the subconclusions—*i. e.*, the individual factor point scores—would not justify the requested increase. The Company had given the union the total point scores. However, assuming it had not done so and that it had denied a union claim for an inequity wage adjustment on the basis that the point score for the job would not justify such change, all that the doctrine of the *Truitt* case would have required the employer to do would have been to give to the union the *total points* assigned by its analysts to the particular job, because this Court said that the obligation of good faith bargaining is discharged if some information is given the union to show the honesty of its asserted position. Therefore, even if there was evidence that an in-

equity dispute existed (and there is none), the Company would have completely discharged its obligation when it gave the union the total point scores assigned each job by the job analyst. Furthermore, the evidence clearly shows that if a dispute over a wage inequity had existed, the Company would have given the subconclusions of its analyst—as it had done in connection with 95 jobs where inequity disputes had arisen (R. 9-13, 135, 150-152).

Let us illustrate the inconsistency between the reasoning of the Court below and that of this Court by another example. If a company gives to its union a copy of its profit and loss and balance sheets as a courtesy even though it *had not* rejected a wage demand because of inability to pay, would that company be guilty of violating the law *per se* if it refused to give a further breakdown analysis of its profit and loss and balance sheet? The doctrine expressed by this Court in the *Truitt* case would make it clear under such circumstances that that company would not be guilty of violating the good faith bargaining requirement. The holding of the court below extended to the above assumed set of facts would suggest such a result—a result clearly in conflict with this Court's decision in the *Truitt* case.

III. This Case Involves a De Novo Situation as It Requires the Delivery of Analytical Conclusions Rather Than Facts.

The Court of Appeals in the case below stated that:

> "We assume that the law does not impose * * * [the requirement that an employer make a job evaluation study], for itself, but when it does so, and its process produces a result upon which its wage structure depends, we are not able to discern any good reason why the union is not entitled to such information in the course of its bargaining negotiations." (Appendix, *infra*, p. 27.)

In making this statement, the Court below recognized the unique character of the information the Union was requesting in this case—a fact which distinguishes this case from the numerous other cases which have required the delivery of certain information to unions.

Board Chairman Farmer and Member Rogers also noted the difference between the information the Union is requesting in this case and the typical factual information which has been considered in other cases. They said:

> "Indeed, it is not even clear that the subject of the Union's demand is 'wage information.' The point designations which the Respondent assigns to the 11 individual job factors represent the Respondent's considered judgment based upon its introspective mental processes. In this instance, the Respondent reduced to writing the finer points of its thinking about the relative difficulty of the jobs in its plant, the comparative skill, experience, training, and other traits the jobs require. Another employer keeps these elements in his mental processes in the abstract and does not reduce them to writing." (R. 185.)

These two members of the Board pointed out the absurdity of a logical extension of the ruling of the majority when they said:

> "If the more methodical employer must expose the details of his inner thoughts at the bargaining table for others critically to appraise, logically, a less systematic one might be compelled to codify his thoughts in writing for the benefit of his employees' bargaining representative. A union's right to such information, if it is such a right and if information it is, can hardly depend upon the form in which an employer keeps it." (R. 185.)

The following table shows that the other cases decided by Courts of Appeals were not dealing with the results of analytical studies:

Court Decision	Information Required Upon Union Request
Boston Herald-Traveler Corp. v. *N. L. R. B.*, 223 F. 2d 58 (C. A. 1, 1955).	The names of the employees and their salaries.
N. L. R. B. v. *Whitin Machine Works*, 217 F. 2d 593 (C. A. 4, 1954), cert. den. 349 U. S. 905, 75 S. Ct. 583 (April 11, 1955).	The job classification, names and the rates of pay for each classification; the names of the employees and their seniority dates.
N. L. R. B. v. *Item Co.*, 220 F. 2d 956 (C. A. 5, 1955), cert. den. 350 U. S. 836, 76 S. Ct. 73 (Oct. 10, 1955).	The names of employees, the merit increases they had received and the dates of such increases.
N. L. R. B. v. *New Britain Machine Co.*, 210 F. 2d 61 (C. A. 2, 1954).	The names of the job classifications, the rates of pay for each classification and the names of the employees and seniority dates.
N. L. R. B. v. *Hekman Furniture Co.*, 207 F. 2d 561 (C. A. 6, 1953).	Employee names, their wage rates, and their classifications of work.
N. L. R. B. v. *Leland-Gifford Co.*, 200 F. 2d 620 (C. A. 1, 1952).	Names of employees and their classifications and the maximum and minimum rates of each classification.
N. L. R. B. v. *Yawman & Erbe Mfg. Co.*, 187 F. 2d 947 (C. A. 2, 1951).	Names of employees and the salaries of each employee.
Aluminum Ore Co. v. *N. L. R. B.*, 131 F. 2d 485 (C. A. 7, 1942).	Names of employees and their rates of pay.
N. L. R. B. v. *J. H. Allison Co.*, 165 F. 2d 766 (C. A. 6, 1948).	Names of employees and their wage rates and merit increases and amounts thereof.
N. L. R. B. v. *Itasca Cotton Mfg. Co.*, 179 F. 2d 504 (C. A. 5, 1950).	Names of job classifications and the hourly rate of pay of such classifications, average hourly earnings in each department and piece rates being paid.
N. L. R. B. v. *Otis Elevator Co.*, 208 F. 2d 176 (C. A. 2, 1953).	Information concerning disputed incentive rates.

Even where employers refused to substantiate an assertion of inability to pay in *NLRB* v. *Truitt Manufacturing Co.*, 351 U. S. 149, 76 S. Ct. 753 (1956) and *NLRB* v. *Jacobs Manufacturing Company*, 196 F. 2d 680 (C. A. 2, 1952), they were required to produce only factual information.

Thus it is now clear that in every employer-employee relationship, there are certain basic facts which are needed in connection with collective bargaining, such as the wage rates the employer is actually paying, the classifications of work for which the wage rates are paid, the number of employees in each classification, etc. It is self-evident that the union needs these basic facts. It should be able to make its own analysis of them. It might desire to compare the wage rates the particular company pays with those paid by other companies in the area or in the industry, etc. The course of action it selects might well depend upon such wage comparisons or other analytical studies.

If the decision of the Court below is based on a correct view of the law, the employer should be entitled to wage comparison surveys, or any other analytical studies made by the union. Possibly by searching through such union information, the employer could find material to more effectively defend against a union demand. The Court below concedes that the employer has the right to demand and search analytical data prepared by the union. It said:

> "We see no reason why either party to the bargaining process should not furnish the other any relevant data or information in its possession pertinent to the wages determined for a certain job or to the wage structure as a whole." (Appendix, *infra*, p. 28.)

The holding that analytical data concerning wages, be it a job evaluation analysis of intra plant wage rate

relationships or inter-plant wage rate comparison study must be supplied by one party to the other, is a *de novo* ruling in this area of information exchange. It is submitted that the Court below has gone too far.

If companies become obligated to turn over the results of a job evaluation analysis which they prepare to a union, they would not dare make such an analysis. Job evaluation analyses, when first made, inevitably indicate that intra-plant wage rate inequities exist. If the employer, by making this analysis, becomes obligated to supply to the union proof that such inequities exist, he will not make one.

The job evaluation type of analysis is management procedure. Its use, as well as the use of other similar analytical procedures such as inter-plant wage rate comparisons, would be retarded if the analytical conclusions resulting from such studies, must, as a matter of law, be turned over to the bargaining adversary.

CONCLUSION.

This Court, in *N.L.R.B.* v. *Truitt Manufacturing Company*, 351 U. S. 149, 76 S. Ct. 753 (1956) said:

> "Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case, the statutory obligation to bargain in good faith has been met." (76 S. Ct. at p. 756.)

The facts involved in this case show that the employer furnished a great deal of information to the Union upon the Union's request—

a complete list of all employees, showing their wage rate and job classification;

the wage rate for each job;

a job description for each job;

the National Metal Trades Association Job Procedure Booklet;

the total points assigned to each job by the job analyst applying the procedure; and

the table used in converting the total points to monetary amounts;

as well as other information.

The Union demonstrated no need for the subconclusions of the Company's job analyst. Nor is there any evidence in the record that any issue concerning wage rate inequities was involved in the collective bargaining between the parties.

Job evaluation information could only become pertinent when the company denies a claimed inequity adjustment on the basis of the study. When such issues have arisen between the Company and the Union, and the Company has resisted the requested change, the Company has *always* supplied to the Union the subconclusions of its job analyst under each of the eleven factors.

Only the blanket request of the Union attorney unrelated to any inequity issue was denied. It was denied because of the fear that if the information was supplied, the Union representatives would have searched for judgment discrepancies on the part of the job analyst in connection with his subconclusions and this "picking apart" would thereby increase, rather than decrease, the issues between the parties.

If each case must turn upon its particular facts, as this Court has clearly stated, no finding of bad faith can be supported upon the facts in this case.

Furthermore, the information requested is of an analytical nature. The law should not force the disclosure of the fruits of one party's analytical efforts to the other party of the bargaining process.

Finally, this Court should resolve the inconsistency between the decision below and the decision of the Court of Appeals for the Ninth Circuit in *NLRB* v. *F. W. Woolworth*, 235 F. 2d 319 (1956), as well as the inconsistency between the decision below and the basic rationale of this Court in *NLRB* v. *Truitt Manufacturing Company*, 351 U. S. 149, 76 S. Ct. 753 (1956).

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

HENRY E. SEYFARTH,
Counsel for the Petitioner.

OWEN FAIRWEATHER,
ROBERT W. MACDONALD,
JOHN F. LANE,
Of Counsel.

APPENDIX.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

No. 11617. OCTOBER TERM, 1955, APRIL SESSION, 1956.

Taylor Forge & Pipe Works, *Petitioner.*
vs.
National Labor Relations Board, *Respondent.*

On Petition for Review of an Order of the National Labor Relations Board.

June 6, 1956.

Before DUFFY, *Chief Judge,* MAJOR and FINNEGAN, *Circuit Judges.*

MAJOR, *Circuit Judge.* Petitioner, while engaged in bargaining negotiations with the Forge and Machine Workers Union, the statutory bargaining representative of its employees, refused the Union's request for information as to certain "point ratings" which petitioner used in determining each employee's rate of pay. The Board (with two members dissenting) concluded that the requested information was relevant and essential to the parties' bargaining and that, consequently, petitioner's conduct constituted a refusal to bargain, in violation of Sec. 8 (a)(5) and (1) of the Act (Title 29 U. S. C. A. Sec. 158 (a)(5) and (1)). The Board's decision, rendered August 16, 1955, required petitioner to cease and desist from refusing to bargain with

the Union, and as affirmative relief required petitioner to furnish the Union with the information sought and to post notices with a showing of compliance within ten days.

The case is here on petition of the employer to review and set aside the Board's order. In answer, the Board has requested enforcement.

There is no dispute of consequence as to the evidentiary facts. It is the conclusion which the Board has drawn therefrom that forms the basis of the instant controversy. More specifically, the issue is legal rather than factual. Nevertheless, a statement of the facts in some detail appears essential.

On April 16, 1954, representatives of petitioner and the Union were engaged in a bargaining conference, including the matter of a wage increase sought by the Union. At this conference the Union's attorney requested of petitioner's personnel manager information contained in its files relative to certain factors which petitioner took into consideration in evaluating each job and upon which the salary paid therefor depended. The denial of this request constitutes the basis for the instant controversy.

Petitioner paid its employees, some 238 in number, an hourly wage rate, determined as to each job by the number of "points" assigned to that particular job. It appraised the various factors, each being awarded a certain number of points, and the resulting point total determined the rate per hour to be paid for each job. A separate sheet was used for each job, with a written analysis of the work to be done, together with its physical aspects, on one side, and on the other, an evaluation of the human factors involved and the point ratings which the various factors merited. The side of the sheet listing the physical aspects was headed "Job Description." The other side was headed "Job Rating Substantiating Data." We need not dwell

upon the "Job Description" information for the reason that this was furnished to the Union and is not in dispute. It is the information setting forth the "Job Rating Substantiating Data" which petitioner refused to furnish the Union. On this side of the sheet petitioner recorded the value of each rating factor. For such purpose eleven factors were employed: Education, Experience, Initiative and Ingenuity, Physical Demand, Mental or Visual Demand, Responsibility for Material or Product, Responsibility for Equipment or Process, Responsibility for Safety of Others, Responsibility for Work of Others, Working Conditions and Unavoidable Hazards. In appraising such rating factors petitioner used as its yardstick a Job Rating Manual, issued by the National Metal Trades Association, which defined the factors and prescribed that each be given a rating from 1st to 5th degree. The manual provided for the conditions required for each degree of a given factor, with the point value to be allowed under the degree determined. Rating was made by comparing the written job description against the manual's degree requirements. Petitioner sought to give each job rating factor that degree (from 1st to 5th) and hence that point value which was called for by the job conditions as described.

While the appraisement which petitioner made of these various rating factors is important, we think they need not be discussed in detail, in view of the admission of the parties relative thereto. It is conceded by the Board that some of the factors lend themselves to a rating as to point value capable of ascertainment to a mathematical certainty. On the other hand, certain other factors are not capable of a point evaluation with any degree of certainty. In other words, the evaluation of such factors for the purpose of determining their point value depends upon the experience and judgment of the evaluator. We do not understand

that petitioner disagrees with the Board as to the manner in which it arrives at the point value to be ascribed to the different factors. In its brief it states, "Each described job is evaluated under certain factors according to the judgment of the evaluator who assigns point values to the job to be used in comparing one job and its wage rate with another job and its wage rate." Moreover, petitioner's personnel manager as a witness admitted that the evaluation of some factors calls for a knowledge of the job rating system, familiarity with the job conditions involved and the exercise of a certain amount of judgment.

We think it is hardly open to dispute but that the total point evaluation assigned by petitioner to the eleven involved factors was not only directly related to the pay determined for each job but that it constituted an important consideration in petitioner's entire wage structure. Moreover, petitioner regarded such information as important to the Union in adjusting grievances arising in individual cases. Over a period of nine years of processing such grievances it had disclosed to the Union the "degree" ratings of 95 individual jobs out of a total of 238 in its plant. In fact, it was a company policy and practice to allow not only the Union but also individual employees, upon request and a showing of good reason, an opportunity to examine its evaluation information. Petitioner's personnel manager testified that the disclosure of such information resulted in the disposition of a number of grievances involving the hourly pay rate.

It is contended here, as it was before the Board, that the Union with the information supplied by the company was in as good a position as petitioner to evaluate the involved factors. The testimony of petitioner's personnel manager on this point, however, carried little weight because the witness in attempting to evaluate the points assigned to a

certain job came up with a total far short of those which petitioner had previously found such job to merit. This evidently resulted from the fact that the evaluation service for petitioner was performed by a specialist in that field. The witness had not participated in the rendition of this service and hence was unable to determine the points to which the particular job was entitled. This was because the points assigned to a number of factors depended upon the judgment of the evaluator. It follows that an evaluation by persons equally competent and qualified was calculated to produce different results and consequently the wages determined by petitioner for each job would depend upon such varying judgment.

We think petitioner stresses to its disadvantage the fact that its point evaluation resulted from the exercise of judgment, with the consequent determination of the wage fixed for each job. In our view, the fact that the exercise of judgment is involved increases the area where controversy is likely to result. Petitioner in its brief states, "Surely the law does not require an employer to make such an analytical study for a Union." We assume that the law does not impose such a requirement, in fact, that it does not impose upon an employer the duty of making such a study for itself, but when it does so and its process produces a result upon which its wage structure depends, we are not able to discern any good reason why the Union is not entitled to such information in the course of its bargaining negotiations.

Petitioner also states in its brief, "As a matter of fact, there are many other job evaluation procedures which are available to the Union in analyzing the basic facts which it had in its possession." Assuming this is a correct statement, it begs the issue because any evaluation made by the Union in all probability would have differed from that made

by petitioner. Thus, a solution of the controversy arising from the Union's demand for increased wages would have been dependent upon a reconciliation of the differing results obtained by the evaluators for the respective parties. We agree with petitioner that it would be just as reasonable to require the Union upon demand to furnish the employer with its evaluation data as to require the employer to furnish such data to the Union. However, we see no reason why either party to the bargaining process should not furnish the other any relevant data or information in its possession pertinent to the wages determined for a certain job or to the wage structure as a whole.

We agree with the Trial Examiner's statement that "Only full disclosure of [petitioner's] wage structure based on the point values assigned to each factor for all jobs would enable the Union to know whether to press or modify a particular wage demand, whether inequities exist which merit discussion or correction, and whether other elements are present in the wage structure which, though impossible to visualize beforehand, appear to merit discussion once the full picture is available."

As already noted, petitioner deemed it appropriate to supply the information now in controversy in every case where it was relevant to an individual grievance. In this connection the Board stated, "It is clear that if the data is relevant and necessary in the case of individual grievances, it is equally relevant and necessary where the object of the negotiation is to establish broad pay formulas which will eliminate the necessity of filing individual grievances." With this reasoning as applied to the facts of this case we agree.

Many cases are cited and discussed by the parties wherein the courts under a variety of circumstances have held that the Act requires an employer to furnish a union with

information relevant to bargaining issues. Some of the more important of such cases are *Aluminum Ore Co.* v. *N. L. R. B.*, 131 F. 2d 485; *N. L. R. B.* v. *Otis Elevator Co.*, 208 F. 2d 176; *N. L. R. B.* v. *Whitin Machine Works*, 217 F. 2d 593; *N. L. R. B.* v. *The Item Company*, 220 F. 2d 956, and *Boston Herald-Traveler Corp.* v. *N. L. R. B.*, 223 F. 2d 58. We think no good purpose could be served in discussing or analyzing these cases. It perhaps is true, as asserted by petitioner, that the particular information sought by the Union in the instant case has not been involved in any of the court decisions. It is equally true, however, that the courts have announced and applied the general principle that an employer is obligated to furnish the union with data and information relevant to issues about which the parties are obligated to bargain. Typical of such cases is the decision of this court in the *Aluminum Ore Co.* case (131 F. 2d 485, 487), wherein we stated: "This [referring to the Act] contemplates exchange of information, ideas and theories in open discussion and an honest attempt to arrive at an agreement. * * * In determining what employees should receive increases and in what amounts, it could have been only helpful to have before the bargainers the wage history of the various employees, including full information as to the work done by the respective employees and as to their respective wages in the past, their respective increases from time to time and all other facts bearing upon what constituted fair wages and fair increases."

Petitioner, relying upon *N. L. R. B.* v. *American National Insurance Co.*, 343 U. S. 395, argues that its refusal to furnish the sought information does not in any event constitute a refusal to bargain in good faith. That case, however, is distinguishable from the instant case, as is shown by note 20, page 407, where it is stated, "This is not the case of an employer refusing to bargain * * * [because of an] erroneous theory * * * of law" as to his bargaining obli-

gation. It has been held in numerous cases that good faith is not open to an employer as a defense to an unfair labor charge based upon its refusal to bargain merely because it entertained an erroneous view of the law. *N. L. R. B.* v. *J. H. Allison & Co.*, 165 F. 2d 766, 770; *N. L. R. B.* v. *Corsicana Cotton Mills*, 178 F. 2d 344, 346; *N. L. R. B.* v. *Berkley Machine Works & Foundry Co., Inc.*, 189 F. 2d 904, 907.

Petitioner raises other questions which we have considered and find without merit. The petition to review and set aside the Board's order is denied. The Board's request for enforcement is allowed and, upon presentation, an appropriate decree will be entered.

FINNEGAN, *Circuit Judge*. Dissenting. At the administrative level a sharply divided opinion among the Labor Board members demonstrates the real problem in the struggle to interpret and apply the "good faith" yardstick ordered by § 8(a)(5) of the Act. The hard core of this appeal is bared by a portion of the Board's order: "* * * we believe that the evidence clearly establishes the relevancy and essential necessity for the substantiating data requested by the Union * * * it is undisputed that the substantiating data is part of the respondent's job evaluation system * * *." Much is made of the fact that Taylor, petitioner here, agreeably supplies such information concerning its system when the Union processes grievances on specific employees and particular jobs. The information involved is written on the reverse side of petitioner's job description sheets. There is evidence that Taylor supplied the Union with material from which it could make its own evaluation and derive point scores for each job. The examiner reported, for example, "* * * the analysis and interpretation of both the job description and the 'degree' criteria in the N. M. T. A. rating manual depends * * * on the judgment of the

evaluator." I eschew the Board's order because it forces Taylor to undergo a test for determining the paternity and intellectual pedigree of its managerial judgments and opinions. The issue before the Board pivoted on "good faith," and an appraisal of Taylor's attitude can be accomplished without forcing production of the "Job Rating Substantiating Data."

I would deny enforcement of the order of the Board.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

No. 11617.

TAYLOR FORGE AND PIPE WORKS,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

DECREE ENFORCING, IN PART, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Before: DUFFY, *Chief Judge,* MAJOR and FINNEGAN, *Circuit Judges.*

This cause came on to be heard upon the petition of Taylor Forge and Pipe Works to review and set aside an order of the National Labor Relations Board issued against petitioner on August 16, 1955, and upon the cross-petition of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on May 8, 1956, and has considered the briefs and transcript of record filed in this cause. On June 6, 1956, the Court, being fully advised in the premises, handed down its decision denying the petition to review and enforcing the order of the Board. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the Petitioner, Taylor Forge and Pipe Works, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Forge and Machine Workers Industrial Union, as the exclusive representative of all its employees, at its Chicago, Illinois, plant, excluding all full-time manual welders, cutters and apprentices in Department A-3, salesmen, office employees, guards, executives, and all supervisors as defined in the Act, by refusing and failing to furnish to said organization, upon request, the "degree" or point evaluation assigned by the Petitioner to each of the factors evaluated in each of its hourly rated jobs in determining the point range for such jobs of employees in the appropriate unit.

2. Take the following affirmative action, which the National Labor Relations Board has found will effectuate the policies of the National Labor Relations Act, as amended:

(a) Upon request, furnish to Forge and Machine Workers Industrial Union the "degree" or point evaluation assigned by the Petitioner to each of the factors evaluated in each of its hourly rated jobs in determining the point range for such jobs of employees in the appropriate unit;

(b) Post at its Chicago, Illinois, plant, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region of the National Labor Relations Board, Chicago, Illinois, shall, after being duly signed by the Petitioner's representative, be posted by the Petitioner immediately after receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken

by the Petitioner to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Petitioner has taken to comply herewith.

/s/ J. EARL MAJOR,
Judge, United States Court of Appeals for the Seventh Circuit,

/s/ F. RYAN DUFFY,
Judge, United States Court of Appeals for the Seventh Circuit,

.....

Judge, United States Court of Appeals for the Seventh Circuit.

Appendix A.

NOTICE TO ALL EMPLOYEES
PURSUANT TO

A Decree of the United States Court of Appeals, enforcing an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Forge Machine Workers Industrial Union, as the exclusive representative of all our employees in the appropriate unit described below, by failing and refusing to furnish said union, upon request, the "degree" or point evaluation assigned by us to each of the factors evaluated in each of our hourly rated jobs in determining the point range for such jobs of employees in said appropriate unit.

WE WILL FURNISH to the above-named union, upon request, the "degree" or point evaluation assigned by us to each of the factors evaluated in each of our hourly rated jobs in determining the point range for such jobs of employees in said appropriate unit.

The bargaining unit is:

All employees at our Chicago, Illinois, plant, excluding all full-time manual welders, cutters and apprentices in Department A-3, salesmen, office employees, guards, executives, and all supervisors as defined in the Act.

TAYLOR FORGE AND PIPE WORKS.

dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
I. The Board's findings of fact	2
A. Petitioner's point-scoring method of fixing hourly pay rates	2
B. Petitioner's refusal of the Union's request for information under its pay determination formula	7
II. The Board's conclusions and order	9
III. The decision of the court below	10
Argument	11
Conclusion	13

CITATIONS

Cases:	
General Pictures Co. v. *Western Electric Co.*, 304 U. S. 175	13
National Labor Relations Board v. *Otis Elevator Co.*, 208 F. 2d 176	11
National Labor Relations Board v. *Truitt Manufacturing Co.*, 351 U. S. 149	12
National Labor Relations Board v. *F. W. Woolworth Co.*, No. 413, this Term	11, 12
Statute:	
National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*):	
Section 8 (a) (1)	9
Section 8 (a) (5)	9

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 519

TAYLOR FORGE & PIPE WORKS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. 23–31) is reported at 234 F. 2d 227. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 153–186) [1] are reported at 113 NLRB 693.

JURISDICTION

The decree of the court of appeals (Pet. 32–35) was entered on July 23, 1956. The petition for a writ of certiorari was filed on October 19, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

[1] The symbol "R" refers to the joint appendix filed in the court below.

QUESTION PRESENTED

Petitioner computes the wage rate for each of its employees by using a "job sheet" on which it breaks the job down into its component factors, assigns certain point values to each factor (the number of points varying with the qualifications of the particular employee), adds the points for the various factors, and translates the sum of the points into dollars and cents. Thus, the wage rate for any employee depends upon the points he is assigned for each factor of his job. The question presented is whether in the course of bargaining negotiations the union representing the employees is entitled, on its request, to obtain from the employer the point ratings which the employer used in determining each employee's rate of pay.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, are set forth in the Petition, p. 3.

STATEMENT

I

THE BOARD'S FINDINGS OF FACT

A. PETITIONER'S POINT-SCORING METHOD OF FIXING HOURLY PAY RATES

Petitioner pays its employees at an hourly rate, determined in the case of each job, by the number of "points" assigned to that particular work. Petitioner appraises the various factors on each job, each factor being awarded a certain number of points, and the resulting point total determines the rate per hour

which petitioner will pay (R. 158–159, 166; 111, 139–140).

Using a separate sheet for each job, petitioner first makes a written analysis of the work to be done (R. 157; 111, 53–55, 143). On one side, petitioner lists the job's physical aspects. On the other, petitioner sets forth the human factors involved and the point ratings which it finds these factors merit in view of the job's physical aspects. As stated above, these point ratings which petitioner accords ultimately determine the hourly rate of pay.

Specifically, the "Job Description" side of the sheet carries data under the headings: Purpose; Description; Machine; Tools; Production; Tolerances; Inherent Delays; Supervision; and Working Conditions (R. 157; 54–55, 143).

Of special interest in this case is the reverse side of the sheet, setting forth the "Job Rating—Substantiation Data." Here petitioner sets down the value of each rating factor in the job. Petitioner finds that every job can be resolved into the following 11 factors for purposes of rating: Education, Experience, Initiative and Ingenuity, Physical Demand, Mental or Visual Demand, Responsibility for Material or Product, Responsibility for Equipment or Process, Responsibility for Safety of Others, Responsibility for Work of Others, Working Conditions and Unavoidable Hazards (R. 158; 87, 111–112, 54–55, 143).

In appraising the foregoing 11 rating factors, petitioner uses as its yardstick a certain Job Rating Manual issued by the National Metal Trades Association. This Manual defines each factor and prescribes

that each is to be given a rating from 1st to 5th degree. It also states the conditions that are required for each degree of a given factor and what point value must be allowed under that degree of that factor (R. 158–159, 166; 86, 111, 57–68, 143).

Rating is done by comparing the written job description against the Manual's degree requirements; petitioner seeks to give each job rating factor that degree (from 1st to 5th), and hence that point value, which is called for by the job conditions so described (R. 158–159; 111–112, 143). This case concerns the efforts of the Union to ascertain what degree, and hence how many points, petitioner assigned to each factor in each job.

In the case of certain factors, petitioner's staff members, using the Manual as their standard, normally can fix the proper degree with accuracy. Thus an employee having less than 3 months' *Experience* rates only the 1st degree, while one with over 5 years must be scored under that factor's 5th degree (R. 60, 143). Similarly, under the factors *Responsibility for Material or Product* and *Responsibility for Equipment or Process,* the degrees to be assigned are governed strictly by the potentialities of damage or loss as measured by stated or ascertainable sums (R. 64–65, 143). That a high degree of exactness is contemplated by petitioner's job rating process appears from the fact that the governing Manual requires that in the case of each of these two responsibility factors the dollar values involved shall be based specifically on 1935–1939 average price levels as adjusted by a cal-

culation under the 1947–1949 Price Index of the U. S. Bureau of Labor Statistics (R. 63, 64, 143).

In the case of some of the other factors, however, the varying "degrees" which ultimately help determine the hourly rate do not lend themselves to precise, objective determination. Thus, under the Job Rating Manual, "considerable" ingenuity in planning and performing "unusual and difficult work" entitles an employee to the points awarded under the 4th degree of *Initiative and Ingenuity,* whereas "a high degree" of ingenuity, initiative and judgement on "very involved and complex jobs" rates the greater number of points which go with the 5th degree (R. 61, 143). In the same way, under *Responsibility for Safety of Others,* a job is performed under conditions of the 3rd degree where an employee's carelessness may mean lost-time accidents to others "such as crushed toes, feet, fingers, or hands, or eye injuries," while under the conditions of the 4th degree there is need of constant care to prevent "serious injury" to others who may, however, "act to prevent being injured" (R. 66, 143). Under *Physical Demand,* work involving heavy-weight material may be deemed to call either for "considerable physical effort," cognizable under the 4th degree, or for "continuous physical exertion" with "constant" or "severe" physical strain, coming under the 5th degree (R. 63, 143). Again, under *Mental and Visual Demand,* the work of the 4th degree requires the employee to concentrate mental and visual attention "closely" while "planning and laying out complex work," but the 5th degree calls for "exacting" mental or visual attention while

"planning or laying out involved and complex jobs" (R. 63, 143).

Petitioner's personnel manager, Paul Plevack, testified that, although he neither supervises nor regularly computes petitioner's job evaluations, he had been able to dispose of a number of grievances involving the propriety of hourly pay rates simply by computing the degree and point value of each factor of the job under consideration from the job description and rating manual. He stated that he invariably arrived at the result which the Company evaluators reached previously (R. 166; 111–112, 116). Plevack also claimed that the Union "could have ascertained" (R. 161, 167; 134–135) the correctness of the Company's stated total point score for each case "merely by evaluating each job as the company did" (R. 161; 70, 133–134), namely "from the job description alone" (R. 112, 114–116, 117–118) with "cross reference" to the Job Rating Manual (R. 114, 136). When asked, however, to evaluate the admittedly simple job of "Service Driver-Janitor" from such reference material, Plevack's determination of the total point score fell from 13 to 23 points short of the range petitioner previously had found the job to merit (R. 166; 125–126, 140). Plevack admitted that many jobs are more complicated (R. 166; 132). Petitioner thereafter conceded that the fixing of degrees under some factors goes beyond use of the written materials which petitioner had supplied the Union (see *infra*), and also calls for a knowledge of the job rating system, familiarity with the shop conditions involved, and the exercise of a certain

amount of judgment (R. 159; 112–113, 116–117, 136). The Board found that different evaluators, acting with complete objectivity, may arrive at significantly differing point ratings for given factors (R. 166).

B. PETITIONER'S REFUSAL OF THE UNION'S REQUEST FOR INFORMATION UNDER ITS PAY DETERMINATION FORMULA

On April 16, 1954, representatives of petitioner and the Union were engaged in a bargaining conference (R. 160; 81, 137). The current contract was to expire at the end of the month and no understanding had yet been reached regarding the matter of a wage increase which the Union was seeking (R. 159–160; 105, 137–138).

At the time, petitioner had in its files analysis sheets for each job unit, fully filled out as to job description on one side and as to job evaluation on the other (R. 160, 162, 168; 82, 84, 87, 109–110, 133, 138). Previously, petitioner had furnished the Union with copies of the Job Rating Manual, its Master Occupation Index or roster of jobs, its point conversion table which equated total point scores to hourly pay rates, and also with each job analysis sheet. However, petitioner had left blank the copies of that side of the job analysis sheets which pertained to job evaluation and which set forth the "degree" it assigned to each of the factors and the substantiating data (R. 161; 110, 97–99, 101–102, 82–83, 84, 87). Petitioner had also indicated previously a willingness to supply the Union with the total point score for each job (R. 161–162; 99–100). Over a period

of nine years, while processing individual grievances, petitioner had disclosed to the Union the "degree" ratings of 95 individual jobs out of 238 performed in its plant (R. 162; 89–90, 110). In addition, when single grievances had led to discussions of a number of other occupations, petitioner had revealed the "degree" ratings for each occupation involved (R. 162; 144–146). Petitioner also had given the Union to understand that it was ready to furnish the Union with this type of information as to any particular job as to which the Union should process a grievance (R. 178; 100, 110). Personnel Manager Plevack stated at the hearing that, if anything, there was "a lack of reticence on the part of the Company to give the point values whenever there was reason for doing so" (R. 134). It was the Company policy and practice to allow not only the Union but also individual employees, upon request and a showing of a good reason, an opportunity to examine an evaluation (R. 168; 148–150, 152).

At the conference on April 16, the Union's attorney asked Plevack for copies of the Job Rating Substantiating Data side of its analysis sheets (R. 160, 162; 87, 109). The attorney explained that the Union wanted the data relative to each rating factor for purposes of bargaining regarding both the operation of petitioner's job evaluation system and any inequities in that system (R. 160; 88). He added that under the existing conditions it was impossible for the Union to know whether the Company was administering its job rating on the merits or on an arbitrary basis so that the total points would equal a figure which it pre-

viously determined as the proper one for the job (R. 160; 88–89). The attorney also stated that the information was needed so that the Union could check the points assigned to each of the 11 factors against the objective conditions that the Union and its stewards could observe (R. 160–161; 89). Citing as a case in point the factor *Working Conditions,* he explained that it was important that the Union be able to see whether, where job conditions were the same, the points assigned were likewise the same or whether they differed and thus created inequities (R. 160; 88–89).

Plevack refused to furnish the requested information. He stated that the Union would not be given the opportunity to "pick apart" the Company's job evaluation system (R. 161; 88, 109–110, 133–134). Plevack also told the Union's attorney that because petitioner already had supplied the Union copies of the written material which it used in making its job evaluations, and because the Union had already obtained the complete point values for the jobs concerning which individual grievances had been processed in the past, the Union now had sufficient information from which it could evaluate each job in the same manner as petitioner (R. 161; 110, 133–134, 135).

II

THE BOARD'S CONCLUSIONS AND ORDER

Upon the foregoing facts a majority of the Board, in agreement with the Trial Examiner, found that petitioner by refusing the requested information violated Section 8 (a) (5) and (1) of the Act (R. 178,

179, 173). The Board majority found the requested data to be relevant and essential for the Union's intelligent representation of the employees in the bargaining negotiations (R. 178–179, 164). It further found the information to be reasonably available from petitioner's records, and that furnishing it, either by supplying copies of the Job Rating side of the evaluating sheets or permitting the Union to make its own copies, would not impose any undue burden upon petitioner (R. 178–179, 165, 168).

Two Board members dissented, taking the view that the data requested was too remote from the actual wage rates to be required for bargaining (R. 181–186).

The Board's order (R. 179–181, 176–177) requires petitioner to cease and desist from the unfair labor practice found. Affirmatively, petitioner is ordered to furnish the union upon request the point evaluation data for each of its pertinent hourly rated jobs, and to post appropriate notices.

III

THE DECISION OF THE COURT BELOW

The court below, Judge Finnegan dissenting, enforced the order of the Board. Noting that "the total point evaluation assigned by petitioner to the eleven involved factors was not only directly related to the pay determined for each job, but * * * constituted an important consideration in petitioner's entire wage structure" (Pet. 26), the court observed that it could "see no reason why either party to the bargaining

process should not furnish the other any relevant data or information in its possession pertinent to the wages determined for a certain job or to the wage structure as a whole" (Pet. 28). The court expressly agreed with the statements of the Trial Examiner and the Board that full disclosure of the point values was essential to the Union in its bargaining negotiations (Pet. 28, R. 164, 178).

ARGUMENT

The holding of the court below that petitioner must furnish the Union at its request with the "point" data which determines the employees' wage rates accords with the holdings of the other courts of appeals on this subject and presents no issue warranting review by this Court.

1. As pointed out in the Government's petition for certiorari in *National Labor Relations Board* v. *F. W. Woolworth Co.*, No. 413, this Term, pp. 7–8, the courts of appeals have repeatedly sustained the Board in requiring production of data relevant to wage rates. See especially *National Labor Relations Board* v. *Otis Elevator Co.*, 208 F. 2d 176 (C. A. 2). Contrary to petitioner's contention (Pet. 11–13), the *Woolworth* case is not in conflict with the decision of the court below. In *Woolworth*, the Ninth Circuit ruled that the Union had the burden of establishing the relevancy of the wage data sought, that there was no presumption of the relevancy of such data, and that there was no adequate showing of relevancy on the record made. In the instant case, the court of appeals found (R. 88–89), in agreement with the Trial

Examiner and the Board (R. 164, 178; Pet. 28–29), that the proof of record affirmatively established that the material sought was relevant to the bargaining. Accordingly, the court below did not reach the question presented in *Woolworth, i. e.,* whether wage data is presumptively relevant.

2. The decision of the court below is in accord with, and follows *a fortiori* from, this Court's decision in *National Labor Relations Board* v. *Truitt Manufacturing Co.,* 351 U. S. 149. *Truitt* sustained the Union's right, under the circumstances there present, to financial data relevant to bargaining, even though such data concerned the employer's own financial condition; the data at stake in the instant case determines the actual wage rates of the employees. Just as in *Truitt* the employer could not meet his bargaining obligation by reiterating a mere conclusion of financial ability, so here the employer cannot merely supply the conclusion—the ultimate wage rate—but must on request produce the subsidiary data which supports the conclusion he has reached.[2]

3. As petitioner states (Pet. 16–19; see also Pet. 29), this is the first case to present the complicated "point" method of determining wage rates. The court below, however, applied settled principles concerning the obligation to supply data pertinent to bargaining, and the fact that petitioner uses a unique

[2] The Union in this case expressed the fear that the employer might not be assigning points "on the merits" but "on an arbitrary basis so that the total would come to a figure previously ascertained by the company * * *" (R. 88).

method of determining wage rates furnishes no basis for grant of the writ. *General Pictures Co.* v. *Western Electric Co.*, 304 U. S. 175, 178.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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